

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2021

PRESENT

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE V.SRISHANANDA

WRIT PETITION NO.1393/2021 (T-RES)

BETWEEN:

M/S.N.M.D.C.,
ADMIN BUILDING
DONIMALAI TOWNSHIP
DONIMALAI, SANDUR,
BALLARI DISTRICT
(REPRESENTED BY
MR.AJAY DWIVEDI
R/AT FLAT NO.503,
THE LEGEND VITTALWADI
HIMAYAT NAGAR
HYDERABAD-29

...PETITIONER

(BY SRI.SHIVADASS, SR. ADV. FOR
SRI.PRASHANTH S. SHIVADASS, ADV.)

AND:

1. THE AUTHORITY FOR ADVANCE RULING
VANIJYA THERIGE KARYALAYA,
KALIDASA ROAD, GANDHINAGAR
BENGALURU-560 009
REP. BY ADDITIONAL COMMISSIONER
OF CENTRAL TAX AND JOINT
COMMISSIONER OF COMMERCIAL TAX
2. COMMISSIONER OF CENTRAL TAX
1, QUEENS RD, VASANTH NAGAR
BENGALURU, KARNATAKA-560 001

3. COMMISSIONER OF STATE TAX
 VANIJYA THERIGE KARYALAYA
 KALIDASA ROAD, GANDHINAGAR
 BENGALURU-560 009

... RESPONDENTS

(BY SRI.VIKRAM HUILGOL, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND SET ASIDE THAT PART OF THE ORDER PASSED BY THE APPELLATE AUTHORITY DATED, VIDE ANNEXURE-A DATED 21.9.2020 THAT REJECTED THE APPEAL ON THE GROUND THAT THERE WAS DELAY OF 245 DAYS IN FILING THE APPEAL, WITHOUT CONSIDERING THE DATE OF ORDER PASSED IN RECTIFICATION OF MISTAKE APPLICATION FILED BEFORE R-1.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 12.02.2021, COMING ON FOR 'PRONOUNCEMENT' OF ORDERS THIS DAY, **SATISH CHANDRA SHARMA J.**, MADE THE FOLLOWING:

ORDER

The present writ petition is arising out of the order dated 21.09.2020 passed by the Karnataka Appellate Authority for Advance Ruling (for short 'AAAR') in Order No.KAR/AAAR-03/2020-21 constituted under Section 97 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act').

2. The facts of the case reveal that the petitioner-M/s.N.M.D.C. Ltd., is a Company incorporated in the year 1958, owned and controlled by the Government of India. One of its unit is located in Donimalai Township, Donimalai, Sandur, Ballari District having GSTIN number 29AAACN7325A1ZR. Since inception, the petitioner is involved in the exploration of

wide range of minerals including iron ore, copper, lime stone, dolomite etc., and also owns a pellet plant adjacent to Donimalai Iron Ore in the State of Karnataka. The petitioner is required to pay royalty as per Section 9(1) of the Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act').

2.1 Section 97 of the CGST Act, 2017 empowers a person to approach the Authority to Advanced Ruling (AAR) by making an application whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in supply of goods or services or both, within the meaning of that term, including the rate of tax, value of tax, etc. among other aspects of such transaction.

2.2 In terms of the aforesaid provision, the petitioner approached the AAR seeking ruling on the questions mentioned below:

- i. *Whether the royalty paid in respect of Mining Lease could be classified as "licensing services for Right to use minerals including its exploration and evaluation" falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods?*
- ii. *Whether the statutory contributions made to the DMF and NMET as per MMDR Act, 1957 amounts to*

"Supply" and whether the same was liable for GST under the reverse charge?

2.3 The AAR vide its order dated 21.09.2019 ruled as under:

"i. The royalty paid in respect of Mining Lease is a part of the consideration payable for the Licensing services for the right to use minerals including exploration and evaluation falling under the Head 9973 which is taxable at the rate applicable on supply of like goods involving transfer of title in goods upto 31.12.2018 and taxable at 9% CGST and 9% SGST from 01.01.2019 onwards under the residual entries of Serial No.17 of the Notification No.11/2017- Central Tax dated 28.06.2017.

ii. The statutory contribution made to DMF and NMET as per the MMDR Act, 1957 are also part of the consideration payable for the Licensing services for right to use minerals including exploration and evaluation.

iii. The supply is of Licensing services for right to use minerals including exploration and evaluation and value of each supply of services includes royalty, DMF and NMET contributions.

iv. Since the supply of services by the Government to a business entity located in the taxable territory, are covered under Serial No.5 of Notification No.13.2017- Central Tax dated 28.06.2017, the liability to pay tax is on the recipient of such services on reverse charge mechanism as the Licensing services for right to use minerals including exploration and evaluation are

provided by the State Government to a business entity, i.e., the Petitioner."

2.4 Being aggrieved by the order of the AAR, the petitioner company filed an application under section 102 of the CGST Act, 2017 i.e, for rectification of the advanced ruling and on 23.01.2020 the AAR has passed an order holding that they have already passed an order on merits and there is no error/apparent mistake on the face of the record for allowing the application preferred for rectification of the advanced ruling.

2.5 That the petitioner company preferred an appeal before the AAAR on 22.06.2020 and the AAAR has dismissed the appeal as barred by limitation. The AAAR in paragraphs 17, 18 and 19 as held as under:

"17. From the above, it is clear that even in cases where a rectification of mistake application is admitted and a mistake apparent on record is corrected, the original order is not set aside. The original order remains on record and only the mistakes are corrected therein. The principle of doctrine of merger will not apply in such cases. Any appeal can be made only against the original order which will be read together with the correction made in the rectification order. In this case, the rectification application was not admitted as there was no error apparent on record and hence, the original order stands without any changes. The ROM rejection order does not merge with the original advance ruling order. The original advance ruling stands without any corrections. The appeal should have been filed by the Appellant against the advance ruling order dated 21-09-2019 within the period of 30 days from the date of communication of the said order.

18. We also observe that in the instant appeal, the Appellant is aggrieved by the entire ruling pronounced by the lower Authority. All issues which were part of the original application for advance ruling are being contested in appeal before us. Assuming for the sake of argument that we consider this appeal as an appeal against the advance ruling dated 21-09-2019, even then we observe that the statutory time limit for filing an appeal against the advance ruling order has long expired. This Appellate Authority being a creature of the statute is empowered to condone a delay of only a period of 30 days after the expiry if the initial time period for filing appeal. We are not empowered to condone any delay beyond what the statute permits us.

19. In view of the aforesaid, we hold that the appeal filed against the ROM order KAR ROM 01/2020 dated 23-03-2020 is not maintainable in as much as the impugned order is not an appealable order under Section 100 of the CGST Act, 2017. We also hold that the ROM rejection order dated 23-03-2020 does not merge with the original advance ruling dated 21-09-2019. Since the appeal is not maintainable, the question of addressing the issues raised in appeal does not arise.

3. Learned counsel for the petitioner has argued before this Court that the AAAR has erred in law and facts in dismissing the appeal as not maintainable as it was filed beyond the period of 60 days. He has argued before this court that the order on the issue of advanced ruling was passed on 21.09.2019 and the application for rectification for advanced ruling was rejected on 23.03.2020 and therefore, keeping in view the doctrine of merger, the limitation should have been counted with effect from 23.03.2020. Hence the order passed by the AAR deserves to be quashed. It has also been argued that even if there is a delay, this court under Article 226 of

Constitution of India can exercise extraordinary jurisdiction to condone such delay and the arguments can be canvassed on merits also. Learned counsel has placed reliance upon the following judgments to bolster his arguments:

1. **ASSTT. COMMR. (CT), LTU, KAKINADA V. GLAXO SMITH KLINE CONSUMER HEALTH CARE LTD.- 2020 (36) G.S.T.L. 305 (S.C.)**
2. **RULE 60 OF ANDHRA PRADESH VAT RULES, 2005-CORRECTION OF ERRORS.**
3. **PAN DRUGS LTD., V. UNION OF INDIA 2016 (337) E.L.T. 183 (GUJ.)**
4. **V.P.KHADER V. COMMISSIONER FOR C.EX., S.T. & CUS., KOCHI, 2019 (25) G.S.T.L. 209 (KER.)**
5. **M/S. KLUBER LUBRICATION (INDIA) PVT. LTD., V. ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, BANGALORE 2021 -VIL-15-KAR.**
6. **HIND WIRE INDUSTRIES LTD., V. COMMISSIONER OF INCOME TAX, WEST BENGAL-V, AIR 1995 SC 1133**
7. **COMMISSIONER OF INCOME TAX V. TONY ELECTRONICS LIMITED. MANU/DE/2869/2009**
8. **TUKARAM KANA JOSHI AND ORS. THR. POWER OF ATTORNEY HOLDER V. M.I.D.C. AND ORS., AIR 2013 SC 565**
9. **JUMANA MATIWALA V. STATE OF MAHARASHTRA, 2015 SCC ONLINE BOM 997**

- 10. INDIAN OIL CORPORATION LIMITED AND ORS. V. SUBRATA BORAH CHOWLEK AND ORS, (2010) 14 SCC 419**
- 11. SRI KANAKA DURGA DEVELOPERS V. ASSTT. COMMR. OF S.T., BANGALORE, MANU/KA/2963/2017**
- 12. APOTEX RESEARCH PVT. LTD. V. UNION OF INDIA, MANU/KA/3349/2016**
- 13. PRACTICE STRATEGIC COMMUNICATIONS INDIA P. LTD. V. C.S.T., DOMLUR-2016 (45) S.T.R. 47 (KAR.)**

4. On the other hand, the learned counsel appearing for the respondents-State vehemently argued before this court that the petitioner before this court did file an application for grant of advanced ruling on to 27.8.2018 and the AAR has passed an order on 21.09.2019. He has further stated that the petitioner/appellant was under an obligation to file an appeal within 30 days keeping in view the statutory provisions under the CGST Act, 2017 and if it is not preferred within 30 days, an application under Section 5 of the Limitation Act should have been filed not beyond 60 days, as there is a bar to condone the delay beyond 60 days and no such appeal was maintainable. He has further argued that the petitioner has certainly filed an

application for rectification of advanced ruling on 23.01.2020 and the same was disposed of by an order dated 23.03.2020 as there was no error apparent on the face of the record and therefore, the doctrine of merger does not take place. He has also argued that once the statute does not provide for condonation of delay beyond 30 days, the AAAR was justified in dismissing the appeal and no case for interference is made out in the matter.

5. Heard the learned counsel for the parties at length and perused the records. The undisputed facts of the case reveals that the petitioner on 27.08.2018 has filed an application in terms of section 97 of CGST Act, 2017 seeking a ruling on the questions in respect of payment of tax on the royalty paid in respect of the mining lease and the contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) and an order was passed in respect of Advance Ruling on 21.09.2019. An appeal was preferred before the AAR on 22.06.2020 and the AAR has passed an order holding that the appeal is not maintainable. The relevant statutory provisions which are necessary for adjudicating the present petition as contained under Sections 95(a), 96, 97, 98, 100, 101 and 102 of the CGST Act, 2017 are reproduced as under:

"95 (a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

96. Authority for advance ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

97. Application for advance ruling

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,--

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

98. Procedure on receipt of application

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

PROVIDED that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

PROVIDED that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

PROVIDED FURTHER that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

PROVIDED ALSO that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they

shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

100. Appeal to Appellate Authority

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

PROVIDED that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

101. Orders of Appellate Authority

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

102. Rectification of advance ruling

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

PROVIDED that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard."

6. The statutory provisions governing the field provides for a remedy of appeal and the petitioner has preferred an appeal on 22.06.2020 and the AAAR has passed an order dismissing the appeal on 21.09.2020 which is impugned in the present writ petition.

7. Learned counsel for the petitioner also brought on record a Notification issued by the CBDT dated 03.04.2020.

However, it is certainly not a Notification extending the period of limitation provided under the statute in respect of appeals. Reliance is also placed upon the judgment delivered by the Hon'ble Supreme Court in the case of ***Hind Wire Industries Ltd. (supra)***. It was a case under the Income Tax Act. In the aforesaid case, the dispute was whether the time period for filing second rectification of mistake application was to be computed from the date of original order or from the date of first rectification of mistake order. The question before the Supreme Court was with respect to the interpretation of the expression '**from the date of order sought to be amended**'. The Supreme Court has held that "the word 'order' in the expression 'order sought to be amended' does not necessarily mean the original order and may mean the rectified order, therefore, second rectification within four years from the order of rectification was justified."

8. In the aforesaid case, there was no outer limit prescribed in the matter of limitation. In the present case, it has been provided under the statute that delay can be condoned only up to 30 days. In the considered opinion of this court, such application for rectification of the mistake was dismissed summarily there was no error apparent, hence, the

doctrine of merger has not taken place. Therefore, the judgment relied upon does not help the petitioner in any manner.

9. Reliance has also been placed upon the judgment delivered in the case of ***Tony Electronics Limited*** (supra). In the aforesaid case, the Delhi High Court has specifically held that the original order had merged with the order of the appellate authority's order and accordingly, the limitation under sub-section (7) of section 154 would be relevant for passing order of rectification within the period of four years. The Supreme Court in the aforesaid case as held as under:

*".... Once we understand the Doctrine of Merger in its true sense, as explained above, and relying upon the interpretation given to the... had ceased to operate on the decision given by the CIT (A) and had merged with the orders of the appellate authority. The final orders passed by the appellate authority were dated 28.06.2004 and acting thereupon the AO passed assessment order, giving appeal effect thereto, on 23.7.2004. Thus, it is the order of 28.6.2004 passed by the CIT (A) which remains on record for all intent and purposes as the original order of assessment has been merged. Once the matter is viewed from this angle, it is no explanation that the error which is sought to be rectified occurred in the original assessment order and was not subject matter of appeal. Obviously, it was a calculation error which could not have been the subject matter of appeal. There appears to be some substance in the submission of learned Counsel for the Revenue that such error could be corrected by the AO exercising the inherent power as, otherwise, the assessee is let off by getting double depreciation, which is not permissible under the Act. **In any case, once we opine that the assessment order had merged with the order of CIT (A) passed on 28.6.2004, the limitation***

for the purpose of Sub-section (7) of Section 154 is to be counted from this date.”

10. This Court has carefully gone through the aforesaid judgment and is of the considered opinion that the statute relating to delay under the Income Tax Act and under the CGST Act are not at all identical. It is provided categorically under the CGST Act that no delay can be condoned after expiry of 30 + 30 days period. No such contingency was involved in the aforesaid case. Not only this, the doctrine of merger is not applicable in the facts and circumstances of the case. Hence, no relief can be granted on the basis of the aforesaid judgment.

11. Learned counsel has also placed reliance on the judgement delivered in the case of ***Rashtriya Ispat Nigam Limited*** (supra). In the said case, the Court has held that the rectification sought was in respect of the same subject matter which was considered in the original assessment order, and hence, the doctrine of merger was applicable. The limitation, therefore, would start to run from the date of re-assessment order. The Court has held “Having regard thereto, in our opinion, the present case, arising from the notice under Section 154 of Act, is covered by the judgment of the Supreme Court in ***Hind Wire Industries Limited*** (supra) and so also the other

judgments referred to in the foregoing paragraphs, in particular Kundan Lal Srikishan and H.R.Sri Ramulu (supra) and in view thereof **we hold that the doctrine of merger would apply to the facts of the present case. The limitation, therefore, would start to run from the date of re-assessment order dated 19.03.2010 and since the notice under Section 154 was issued on 31.08.2012, it was well within the time stipulated under sub-section (7) of Section 154 of the Act”.**

12. This court has carefully gone through the aforesaid judgment. However, again it was the case under the Income Tax Act. No outer limit in respect of limitation was provided under the statute as provided under the CGST Act. There cannot be condonation of delay beyond the period of 60 days. Keeping in view the facts and circumstances of the case as doctrine of merger is not at all applicable. Hence, the judgment relied upon is again is of no help to the petitioner.

13. The cases relied upon by the learned counsel for the petitioner relate to those cases where the issue of doctrine of merger was involved and the cases relate to Income Tax Act or Central Excise Act, 1944. The provisions under both the Acts are not identical to the provisions dealing with limitation under

the CGST Act, 2017. The provisions under the CGST Act, 2017 provides that the delay cannot be condoned beyond the period of 60 days. The Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited and others (2017) 5 SCC 42** has held in paragraph-15 as under:

"15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Association (supra) has ruled that there is no conflict of opinion in Antulay's case or in Union Carbide Corporation's case with the principle set down in Prem Chand Garg & another v. Excise Commr. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corporation's case. As the pronouncement in Chhattisgarh SEB lays down quite clearly that the policy behind the Act emphasizing on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."

14. In the case of **Asstt. Commr. (CT), LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd.** reported in **2020 (36) G.S.T.L. 305 (S.C.)**, the Hon'ble Supreme Court in paragraphs-14 and 15 has held as under:

"14. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

15. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. vs. Union of India & Ors. and also of the Karnataka High Court in Phoenix Plasts Company vs. Commissioner of Central Excise (Appeal I), Bangalore. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also nonsuit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the

statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose”.

15. In the light of the aforesaid judgment, the AAR was justified in rejecting the appeal on the ground of limitation as it was not having power to condone the delay beyond 30 days. Therefore, this Court also does not find reason to condone the delay keeping in view the statutory provisions.

16. The law of limitation is found upon maxims such as “*Interest Reipublicae Ut Sit Finis Litium*” which means that litigation must come to an end in the interest of society as a whole, and “*vigilantibus non dormientibus Jura subveniunt*” which means that the law assists those that are vigilant with their rights, and not those that sleep thereupon. The law of limitation in India identifies the need for limiting litigation by striking a balance between the interests of the state and the litigant.

17. In the aforesaid case, the statute provided for condonation of delay which is not beyond 60 days. The Hon'ble Supreme Court has held that the delay cannot be condoned beyond 60 days and therefore, in the light of the aforesaid judgment, question of condoning the delay beyond 30 days does not arise.

18. Resultantly, this court does not find any reason to interfere with the order passed by the AAR as the appeal itself was preferred beyond the expiry of limitation period. The petition stands dismissed.

No orders as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

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